* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1189 of 2006**

Judgment reserved on: May 9, 2007

% Judgment delivered on: May 29, 2007

Commissioner of Income Tax
Delhi-X, New Delhi Appellant

Through Mrs. Prem Lata Bansal with
Ms. Sonia Mathur, Advocates

Versus

Vipin Batra
D-12, Rana Pratap Bagh
New Delhi ...Respondent

Through Dr. Rakesh Gupta with Mr. Jitender
Saini, Advocates

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

**MADAN B. LOKUR, J.**

The Revenue is aggrieved by an order dated 30th November, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench SMC in ITA No.5020/Del02004 relevant for the assessment year 1996-97.

2. By the impugned order, the Tribunal took the view that re-assessment proceedings carried out by the Assessing Officer in terms of Section 147/148 of the Income Tax Act, 1961 (the Act) lacked in valid jurisdiction and were, therefore, liable to be set aside.

3. After hearing learned counsel for the parties, we admit this appeal and frame the following substantial question of law for consideration:

> "Whether the Income Tax Appellate Tribunal was correct in law in holding that the notice issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 was bad in law and, therefore, the assessment framed in pursuance thereof was liable to be quashed?"

4. Filing of paper books is dispensed with.

5. The assessment was framed in respect of the assessee under

Section 143(3) of the Act read with Section 147 thereof on 29th March, 2004. By this assessment, an addition of Rs.1,27,650/- was made to the assessee's income as a result of a finding that it represented the assessee's own unaccounted money which had been introduced in the garb of long term capital gains arising out of the sale of shares.

6. It appears that the alleged sale of shares was carried out through a broker M/s Maheswari Sons whose proprietor was Shri Shankar Hari Maheswari. The broker appears to have admitted in a statement that he has not carried out any sale or purchase of shares.

7. On these broad facts, the Assessing Officer recorded the following reasons for issuing a notice under Section 148 of the Act for carrying out a re-assessment:

> "Information is received from the office of DDIT (Investigation) Gurgaon that investigation were conducted by that office with respect to bogus entries of long term capital gain taken by some assessees from one bank account of M/s Maheswari Sons, A/c No. 8627, Punjab National Bank, Karol Bagh, New Delhi.
>
> It has come to light that beneficiaries have taken entries by paying in cash an amount equivalent to the draft/cheque amount and certain premium on that. No sale/purchase of

shares has actually taken place. The operator of the said account Sh. Praveen Mittal has also admitted in his statement that bogus transactions relating to sale/purchase of shares were done through this bank account and most of the beneficiaries have availed relief u/s 54F of the I.T. Act, 1961. Some of the beneficiaries like firm/company took capital losses to offset their business gains.

The name of Shri Vipin Batra is included in the list of beneficiaries from the said account of M/s Maheswari Sons in the form of following transaction having received the said amount in his bank account no. 10007 with Syndicate Bank, Mori Gate, Delhi.

| S.No. | Date of taking entry | Amount |
|---|---|---|
| 1 | 27.5.95 | 1,27,650/- |

There was a reason to believe that income of the assessee from undisclosed sources had escaped assessment in the form of bogus capital gain for AY 1996-97."

8. It is not necessary to go into the merits of the controversy because, as noted above, the Tribunal concluded that there was no specific information before the Assessing Officer entitling him to come to the conclusion that the transaction of long term capital gains was not genuine so as to constitute escapement of income. It was held that the assumption of jurisdiction was clearly flawed and, therefore, subsequent proceedings including the assessment framed were liable to be quashed.

9. We are of the view that the opinion of the Tribunal is erroneous in law.

10. In ***Raymond Woollen Mills Ltd. v. Income-tax Officer & Ors., (1999) 236 ITR 34***, the Supreme Court held that what is required to be seen in a case such as this is whether prima facie there was some material before the Assessing Officer on the basis of which he could reopen the case of the assessee. The sufficiency or correctness of the material is not to be considered because it is open to the assessee to prove that the facts assumed by the Assessing Officer in the notice were erroneous.

11. Much earlier, in ***Phool Chand Bajrang Lal & Anr. v. Income-tax Officer & Anr., (1993) 203 ITR 456***, the Supreme Court reviewed the entire case law and concluded that:

(a) There must be some specific, reliable and relevant information available with the Assessing Officer.

(b) The Assessing Officer must have reasons, which he must record, that income has escaped assessment.

(c) The case should not be one of a mere change of opinion by the Assessing Officer or the drawing of a different inference from the same facts but that those reasons must be based on facts which have subsequently come into possession of the Assessing Officer.

(d) The sufficiency of reasons for forming the belief is not for the Court to judge although the assessee can contend that the belief was not bona fide or was based on vague, irrelevant and non-specific information or that the material did not have any rational connection or a live link for the formation of the requisite belief.

This is what the Supreme Court said:

> "From a combined review of the judgments of this court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either

> because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extend, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

12. This Court also had occasion to deal with the issue of reopening a completed assessment in ***United Electrical Co. P. Ltd. v. Commissioner of Income-tax & Ors., (2002) 258 ITR 317***. This decision has been relied upon by the Tribunal but we find that it is clearly distinguishable because in that case the Division Bench came to the conclusion that the statement on the basis of which reopening was sought was too general and it did not mention any name, much less the name of the assessee. It was, therefore, held that there was no information on record which could provide a foundation for the

Assessing Officer's belief that the assessee's transaction was not genuine and that this income had escaped assessment on that account.

13. Applying the law laid down by the Supreme Court as well as this Court, we need to take a look at the reasons recorded by the Assessing Officer for initiating proceedings under Section 148 of the Act.

14. In the first place, we find that information available with the Assessing Officer was not vague or general in nature because it referred to bogus entries of long term capital gain taken by some assessees from M/s Maheswari Sons whose bank and account number were identified. One of the bogus entries related specifically by name to the assessee and the date of his taking the entry and his bank and account number as well as the amount have been specified in the reasons recorded. It has also been noted that in fact no sale or purchase of shares had actually taken place and the person who had operated the account of M/s Maheswari Sons, that is, Shri Praveen Mittal admitted in his statement that bogus transactions relating to sale and purchase of shares were done through

this bank account and most of the beneficiaries have availed relief under Section 54F of the Act.

15. On this material, which must be examined only prima facie, we find that there was specific and adequate reason for the Assessing Officer to come to the conclusion that the transaction entered into by the assessee with M/s Maheswari Sons for the sale and purchase of shares was a bogus transaction which was entered into through an identifiable bank and an account number. The truth or otherwise of this information is not a matter that is required to be considered by the us. All that we have to see is whether there was sufficient material and that it was not vague or of a general nature.

16. We are satisfied, on the basis of the information disclosed in the reasons to believe recorded by the Assessing Officer, that there was legitimate ground for him to issue a notice to the assessee under Section 148 of the Act and the assessee was entitled to contend that the facts taken into consideration by the Assessing Officer were incorrect.

17. We find that the Tribunal has not gone into the merits of the controversy. Therefore, while answering the question in the negative, we set aside the order passed by the Tribunal and remand the matter back to its file for taking a decision on merits.

18. The appeal is, accordingly, disposed of.

Madan B. Lokur, J

May 29, 2007
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V.B. Gupta, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.